

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON DIVISION

RAWLEIGH BERRYHILL,

Plaintiff,

v.

CIVIL ACTION NO. 2:13-cv-23072

AMERICAN MEDICAL SYSTEMS, INC.,

Defendant.

MEMORANDUM OPINION AND ORDER

Pending is a Motion to Dismiss Plaintiff Rawleigh Berryhill's Complaint with Prejudice for Failure to Comply with Pre-Trial Order # 274, filed July 25, 2019. [ECF No. 19]. Defendant American Medical Systems, Inc. ("AMS") cites to plaintiff's failure to timely serve a Plaintiff Fact Sheet ("PFS") in violation of the court's Pretrial Order # 274 and the Federal Rules of Civil Procedure. Plaintiff has not responded to the motion.


The court finds, pursuant to Rules 16 and 37 of the Federal Rules of Civil Procedure and after weighing the factors identified in *Wilson v. Volkswagen of Am., Inc.*, 561 F.2d 494, 503-06 (4th Cir. 1977), that this case should be dismissed without prejudice for failure to provide a PFS in compliance with the court's previous orders.

Therefore, the court **ORDERS** that AMS's motion to dismiss [ECF No. 19] is **GRANTED in part** to the extent the AMS seeks dismissal and **DENIED insofar as**

AMS seeks dismissal with prejudice. The court **ORDERS** that the case is dismissed without prejudice and stricken from the court's docket.

The court **DIRECTS** the Clerk to send a copy of this order to counsel of record.

ENTER: September 20, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE